UNITED
NATIONS

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Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1993/NGO/14
9 August 1993

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Forty-fifth session
Agenda items 10 and 13

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

ELIMINATION OF ALL FORMS OF INTOLERANCE AND OF DISCRIMINATION BASED ON RELIGION AND BELIEF

Written statement submitted by the International Federation of Human Rights, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following written statement which is distributed in accordance with Economic and Social Council resolution 1296 (XLIV).

[6 August 1993]

GE.93-14515 (E)

Detention of political and religious prisoners in the Socialist Republic of Viet Nam

1. The International Federation of Human Rights (IFHR) and its affiliate organization, the Vietnam Committee on Human Rights, are deeply concerned that political and religious prisoners continue to be arrested and detained in the Socialist Republic of Vietnam simply on account of their peaceful and legitimate activities, or for the peaceful exercise of their right to express their opinion or religious beliefs.

2. In a statement at the forty-ninth session of the Commission on Human Rights on 3 March 1993, the Vietnamese delegation informed the Commission that "there are no political or religious prisoners in Vietnam. There are only common criminals, who are punished for activities that infringe the law".

3. Whereas the IFHR and the Vietnam Committee recognize the duty of citizens to respect the law, they believe that the imprisonment by the Government of critics and religious leaders as common criminals is based on domestic laws which are clearly incompatible with international human rights legislation and which undermine fundamental civil and political rights. In particular, articles in the 1986 Criminal Code and the 1989 Criminal Procedures Code relative to national security and public order are inconsistent with the rights guaranteed in the International Covenant on Civil and Political Rights (ICCPR) to which Viet Nam acceded in September 1982.

4. The arbitrary detention of political prisoners has been the cause of widespread protests in central and south Viet Nam. Since 30 April 1993, four Buddhists have immolated themselves in protest against the arbitrary arrest of religious clergy and their followers.

5. The IFHR and the Vietnam Committee are particularly concerned by a recent security sweep directed against the Unified Buddhist Church of Viet Nam (UBCV-An Quang pagoda) in May and June 1993, during which 300 UBCV clergy and followers were arrested. This recent wave of arrests follows a pattern of grave and consistent religious intolerance against the UBCV since 1975, as we have regularly informed the Commission and the Sub-Commission in previous years. This escalated into a nationwide campaign of repression after the death of Patriarch Thich Don Hau in April 1992 (see E/CN.4/1992/NGO/27).

6. On 24 May 1993, in Hue, an estimated 40,000 Buddhists took part in a demonstration, demanding the immediate release of Venerable Thich Tri Tuu, Superior Monk of Linh Mu pagoda, and the respect for religious freedom in Viet Nam. According to an eye-witness report from Hue sent to the IFHR and the Vietnam Committee:

> "Security police backed up by 200 bo doi (frontier soldiers from the People's Army) used teargas, electric truncheons, clubs and water canons to terrorize and repress the demonstrators (...). Since the demonstration, the State press, radio and television have continually slandered the people of Hue (...). Over the past few days, security police have been systematically arresting people who took part in the demonstration, which they filmed on video. A widespread security sweep

has been launched, and they are indiscriminately arresting both old and young, men and women (...). In Dong Ba market, security agents have arrested stall-keepers, dragging them off in handcuffs in broad daylight."

7. Since the events of 24 May, UBCV pagodas in Thua-Thien-Hue, Quang-Nam-Danang, Quang Tri, Khanh Hoa, Dong Nai and Ba Ria are under constant surveillance. Secret police and security agents surround the pagodas, harassing and interrogating Buddhist followers and preventing monks from circulating freely. Postal communication to these pagodas has been suspended and telephone lines have been cut off.

8. The IFHR and the Vietnam Committee on Human Rights are especially concerned about Venerable Thich Tri Tuu, Thich Hai Tang and Thich Hai Thinh who were arrested on 5 June 1993 along with other UBCV clergy and followers. According to the official daily Saigon Giai Phong (6 June 1993) they are being prosecuted for "disturbing public order" and are under temporary custody in Thua Phu Prison, Hue. As we informed the Commission in February 1993, Venerable Thich Tri Tuu and Venerable Thich Hai Tang have been subject to continuous police harassment since the death of Thich Don Hau (E/CN.4/1992/NGO/27).

9. An "urgent report" from monks in Linh Mu pagoda (11 June) indicates that Thich Tri Tuu was arrested in extremely violent circumstances. The IFHR and the Vietnam Committee believe that the real motives for his arrest were his refusal to denounce the immolation of the Buddhist layman and a letter he addressed to the government authorities on 27 May, in which he called for (i) legal recognition of the UBCV and the restoration of confiscated church property; (ii) the release of all UBCV clergy and followers imprisoned or detained under house arrest; and (iii) respect for religious freedom in Viet Nam. In this case, the arrest of Venerable Thich Tri Tuu violates article 74 of the 1992 Constitution which guarantees the right of everyone to seek a remedy for violated rights.

10. The IFHR and the Vietnam Committee were informed of the unjustifiably violent and arbitrary arrest of Venerable Thich Hai Tang, Superior Monk at Long An pagoda, Quang Tri, in a letter from Buddhists in Quang Tri dated 17 June 1993:

"The Deputy Security of Quang Tri and 20 people in civilian clothes came to the Pagoda at about 4.30 p.m. [on 5 June] and asked to speak to our Master. Suddenly, Special force police wearing camouflage and metal helmets, armed with electric truncheons and rifles burst in. They were led by Le Minh Hue and Tran An Toi from the Quang Tri Provincial Investigations Bureau. They read out an arrest warrant on our Master and made him sign it. Then they forced him to strip off his monk's robes and put on prisoners' clothing (...). Our Master asked to keep his monk's robe, but they flatly refused, saying he was a convict now, not a monk, and that Venerable Thich Hai Tang no longer existed, but only Nguyen Dinh Hoa [his secular name] remained. Our Master asked to speak to a lawyer or a representative of the press (...) but they refused. They handcuffed him and took him away".

11. Venerable Thich Hai Thinh was also stripped of his monk's clothes, handcuffed and taken away by security agents. This contravenes article 66 of the Criminal Procedures Code, which stipulates that no arrest can be made without a written warrant, which must be signed by the arrested party and by witnesses.

12. The arrest of Venerables Thich Tri Tuu, Thich Hai Tang and Thich Hai Thinh not only gravely violates articles 9 and 10 (2) of the ICCPR which guarantee the right to the liberty and security of the person and specify that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person,", but also contravenes article 5 of the Universal Declaration of Human Rights, which states that "no one shall be subjected to torture, cruel, inhuman or degrading treatment or punishment". Moreover, the IFHR and the Vietnam Committee believe that by taking part in the 24 May demonstration, Venerables Thich Hai Tang and Thich Hai Thinh were simply exercising their legitimate right to the peaceful expression of their opinions and their right to demonstrate as guaranteed by article 69 of the Constitution and article 21 of the ICCPR, which specifies the right of peaceful assembly.

13. The IFHR and Vietnam Committee are deeply concerned that the fundamental principle embodied in article 14 (2) of the ICCPR, that accused persons are presumed innocent until proven guilty, is seriously undermined by defamatory statements regarding Venerables Thich Tri Tuu, Thich Hai Tang and Thich Hai Thinh in the State-controlled media and press. Nhan Dan, Quan Doi Nhan Dan, (31 May 1993) Saigon Giai Phong, Tuoi Tre (1 June 1993) published an interview with the Mayor of Hue, Le Van Anh, under the title "The Truth about the unlawful disturbances of security and public order in Hue". He accused Thich Tri Tuu of spreading "false and malicious information" about the death of the Buddhist in Hue, and called the monks "extremists ... in collusion with bad elements at home and abroad with the aim of violating the law". Footage of the demonstration was shown on State television with similar commentaries. On 10 June, Vu Quang, Chairman of the Board of Religious Affairs, accused the monks of "masterminding" public disorder, and colluding with Venerable Thich Huzen Quang to oppose the State-sponsored Buddhist Church. The IFHR and the Vietnam Committee possess over 60 defamatory articles published in seven official national newspapers between 31 May 1993 and 15 July 1993 under threatening titles such as "We must exterminate people who exploit Buddhism to divide Buddhists and violate the law" (Saigon Giai Phong 10 June 1993), "Punishing troublemakers who destroy the faith and disturb the life" (Cong An, Ho Chi Minh City, 16 June 1993). These articles were reproduced by local newspapers and radios all over the country.

14. The IFHR and the Vietnam Committee are also particularly concerned about the Venerable Thich Huyen Quang, Head of the Unified Buddhist Church of Viet Nam, who has been arbitrarily detained under house arrest at his village in Quang Ngai. The Vietnamese authorities continue to deny that he is under house arrest, but on 15 April, Venerable Thich Huyen Quang sent a letter to the United Nations Secretary-General in which he confirmed he was still confined to his pagoda, under constant police surveillance. He is not allowed freedom of movement. In April this year, police prevented him from travelling to Hue to attend the memorial service of Patriarch Thich Don Hau. If the

authorities consider him to be free, they should give him written notification of his release and restore his full civil rights, including freedom of expression, movement and religion in accordance with the provisions of the Constitution.

15. Another case for concern is that of the Venerable Thich Tri Luc, who is under house arrest in Gia Lam pagoda, Go Vap, Ho Chi Minh City. Arrested in October 1992, security police forced him to write a "confession" denouncing the testament of Patriarch Thich Don Hau. In a letter dated 30 April 1993, he states: "Although I have been released from prison, I am still in detention. The authorities have put me under house arrest."

16. The IFHR and the Vietnam Committee are profoundly disturbed by the systematic repression of the rights to freedom of expression and freedom of conscience in Viet Nam and by the arbitrary arrests of clergy and followers of the Unified Buddhist Church of Viet Nam. We fear, furthermore, that the forthcoming trials of these monks may not conform to accepted international standards, and that they will not be guaranteed their right to a fair trial.

UNITED
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Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1993/NGO/15
12 August 1993

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Forty-fifth session
Agenda items 10(b) and 11

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY

INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY, JURORS AND ASSESSORS AND THE INDEPENDENCE OF LAWYERS

Written statement submitted by the International Federation of Human Rights, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following written statement which is distributed in accordance with Economic and Social Council resolution 1296 (XLIV).

[6 August 1993]

HUMAN RIGHTS, STATES OF EMERGENCY AND THE PROTECTION OF LAWYERS

The case of the United Kingdom of Great Britain and Northern Ireland

1. The International Federation of Human Rights (IFHR) wishes to express its appreciation and support of the method which has been followed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities in the reports on states of emergency and the independence of the judiciary and of lawyers. This consists in evaluating, on a case-by-case basis, human rights situations against specific human rights standards. The method offers a pragmatic framework within which to analyse complex phenomena.

2. For instance, in the case of the United Kingdom, IFHR and its Northern Ireland correspondent, the Committee on the Administration of Justice (CAJ), are concerned about a number of human rights issues in Northern Ireland which are closely linked to the Government-declared state of emergency and which also concern the protection of lawyers. Questions on these issues have been raised at the Sub-Commission in August 1992, at the Commission on Human Rights in April 1993, at the Human Rights Committee in April 1991 and at the Committee against Torture in November 1991.

The use of lethal force by members of the security forces in Northern Ireland

3. Information gathered by IFHR and CAJ indicates that police and soldiers have been responsible for killing some 350 people in Northern Ireland since 1969. There is concern about the consistent lack of accountability on the part of the authorities arising out of these killings. Out of only some 30 prosecutions brought, only 4 have resulted in convictions; 1 for manslaughter, 2 for murder and 1 for attempted murder. In one of the latter cases, Private Thain was released from a life sentence after having served only two years and three months; the average life sentence for murder in Northern Ireland currently exceeds 12 years.

4. Principle 7 of the United Nations Basic Principles on the Use of Force by Law Enforcement Officials states: "Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law." IFHR and CAJ are deeply concerned that the statistics indicate that members of the security forces can kill with virtual impunity.

5. Other concerns about the use of lethal force include:

(a) The law governing the use of force, section 3 of the Criminal Law (Northern Ireland) Act 1967 provides that "such force as is reasonable in the circumstances" may be used. This phrase seems excessively vague and has been interpreted even more vaguely by the courts, which have failed to give an authoritative ruling on the issue. Lord Diplock in a leading case on this issue (Attorney-General for Northern Ireland Reference (No. 1 of 1975) (1977)) justified the use of lethal force on the ground that, where a soldier reasonably believed someone to be a member of a paramilitary organization, it was reasonable to shoot him, even if he was unarmed and running away, as the person (who in this case turned out to be unconnected with any paramilitary organization) "was likely sooner or later to participate in acts of violence". These rulings have offered the security forces an unjustifiably wide scope in using lethal force. By contrast, international standards such as the European Convention on Human Rights allow only such force as is "absolutely necessary";

(b) The inappropriate use of plastic bullets by security forces. Seventeen people (including seven children) have been killed by plastic or rubber bullets. Principle 3 of the United Nations Basic Principles on the Use of Force by Law Enforcement Officials states: "The development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled." These principles also call for

prohibiting the use of those firearms and ammunition that cause unwarranted injury or present unwarranted risk;

(c) Allegations that there is a practice, if not actually a policy of extrajudicial executions. The killing of three unarmed Irish Republican Army (IRA) members by soldiers in Gibraltar in March 1988 and of three unarmed people involved in a robbery by undercover soldiers on the Whiterock Road in Belfast in January 1989 are among a number of incidents where significant doubts exist over whether people could have been arrested rather than shot. No criminal prosecutions have arisen out of these, no public inquiry has been undertaken. When an internal police inquiry was undertaken in 1986 into the deaths of six unarmed people at the hands of the police in County Armagh in November 1983 the officer conducting the inquiry, Mr. John Stalker, was removed before its completion, his full report was never published and the then Attorney-General, Sir Patrick Mayhew, decided not to act on recommendations to prosecute police officers for perverting the course of justice on the grounds that this was "not in the public interest". Political assassinations are specifically prohibited under the United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. Furthermore, the Principles state: "Exceptional circumstances including a state of War, ... internal political instability or any other public emergency may not be invoked as a justification of such executions";

(d) IFHR and CAJ are concerned that investigations into State killings are characterized by a lack of independence, unreasonable delays and the hindering of immediate access by investigators to suspects and evidence. The United Nations Principles require Governments to conduct thorough, prompt and impartial investigations into State killings. Despite an undertaking in 1988 that it would ask police forces from outside Northern Ireland to investigate shooting incidents by the Royal Ulster Constabulary, this has not happened;

(e) IFHR and CAJ have monitored the evidence of collusion between elements within the police and army and loyalist paramilitary groups (who use political violence to maintain the link between Northern Ireland and the United Kingdom) and the failure on the part of Government to address this matter. This collusion involves either the passing of security information or more active participation in illegal activities. An inquiry into the former was instituted by the police in September 1989 though the full results were never made public. Furthermore, since the inquiry a number of other leakages of information have come to light. One of those arrested, however, was Mr. Brian Nelson. At his trial it emerged that he was working as a double agent for army intelligence and had infiltrated a loyalist paramilitary group. During that time he was involved in targeting a number of individuals who were subsequently killed. Mr. Nelson has claimed that on several occasions his army handlers were aware that these people were likely to be killed but did nothing to prevent their deaths. In spite of this no action has as yet been taken against those responsible for supervising Mr. Nelson and murder charges were dropped against him before his trial. IFHR and CAJ are deeply concerned that the United Kingdom Government has refused calls for an independent inquiry into the Nelson case.

Fair trial issues

6. Since the early 1970s, there have been many allegations of ill-treatment of detainees in Northern Ireland. In 1978 the European Court of Human Rights found in the case of Ireland v. United Kingdom that the United Kingdom was subjecting detainees to inhuman and degrading treatment in Northern Ireland. More recently, in November 1991, the United Nations Committee Against Torture looked at renewed allegations of ill-treatment and expressed concern about the regime governing the detention of people held under emergency legislation in Northern Ireland. The specific issues which continue to concern IFHR and CAJ include:

(a) The fact that detainees can be held for up to seven days without being brought before a court. The power remains in breach of the European Convention and the International Covenant on Civil and Political Rights and requires a derogation from both by the United Kingdom Government. In the recent European Court of Human Rights case of Brannigan and McBride v. United Kingdom the Court ruled that the derogation from the European Convention was valid;

(b) The domestic laws governing access to lawyers particularly concern IFHR and CAJ. The position appears to contravene paragraph 8 of the Basic Principles on the Role of Lawyers which provides: "All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials". By contrast, detainees in Northern Ireland can have access to legal advice deferred by the police for up to 48 hours and do not have an unqualified right to confidential consultations. IFHR and CAJ believe that suspects should be given the right to have their lawyers present during interrogations, a right which is afforded to people arrested under the same provisions in Great Britain and under the ordinary criminal law throughout the United Kingdom;

(c) Detainees regularly report that police officers make threats against the lives of their lawyers, question their lawyers' professionalism and suggest that their lawyers are in the pay of or are members of "terrorist" groupings. Many of these alleged threats contain references to the murder in February 1989 of a Belfast solicitor, Mr. Patrick Finucane, who represented many detainees accused of "terrorist" offences. Mr. Finucane was killed by loyalist paramilitaries and there is strong suspicion of official collusion in the murder. Evidence of such official connections emerged during the course of the trial of Brian Nelson (see above). The Lawyers' Committee for Human Rights, which carried out an investigation into these issues, concluded that "there should be an independent public inquiry into allegations of official threats and abuse of defence solicitors" and that "there should be an independent, judicial public inquiry into the murder of Patrick Finucane". During the Sub-Commission's proceedings in 1992 the expert from the United Kingdom also called for an independent inquiry;

(d) Concerns have been expressed to IFHR and CAJ that the complaints mechanism in respect of police conduct is inadequate. Not one single

complaint made by detainees in the last five years about ill-treatment during detention in the holding centres has been upheld. The United Kingdom Government remains reluctant to arrange that interrogations be video- and audio-recorded. This would provide concrete evidence of what takes place during interrogations and thereby protect detainees from ill-treatment and police officers from false allegations. The expert of the Sub-Commission from the United Kingdom called for such recordings last year, as did the United Nations Committee against Torture;

(e) The right to silence is no longer protected in Northern Ireland and the standards governing the admissibility of confession evidence have been lowered to make it easier to admit such evidence under emergency legislation. The overall thrust of these changes appears contrary to article 14(3)(g) of the International Covenant on Civil and Political Rights.

7. In conclusion, IFHR and CAJ respectfully request the Sub-Commission and the special rapporteurs concerned to take all appropriate measures to ensure that United Kingdom legislation and practice be brought into conformity with international standards.